



2004040197

FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2004 JUL 28 03:01:45 PM
BK:4427 PG:191-229 FEE:\$125.00

INSTRUMENT # 2004040197

NOTICE OF BROWNFIELDS PROPERTY

This Notice of Brownfields Property ("Notice") is filed on July 26, 2004 by Cape Fear Soccerplex, LLC (hereinafter "Prospective Developer"), and is recorded at the New Hanover County Register of Deeds office in the Book and Page stamped hereon. Cape Fear Soccerplex, LLC is the current owner of the property that is the subject of this Notice.

This is a notice regarding contaminated property.

A certified copy of this Notice certified by the North Carolina Department of Environment and Natural Resources (hereinafter "DENR") is required to be filed in the Register of Deeds' Office in the county or counties in which the land is located, pursuant to North Carolina General Statutes (hereinafter "NCGS"), Section (hereinafter "§") 130A-310.35(b).

This Notice is required by NCGS § 130A-310.35(a), in order to reduce or eliminate the danger to public health or the environment posed by environmental contamination at a property (hereinafter the "Brownfields Property") being addressed under the Brownfields Property Reuse Act of 1997, NCGS § 130A, Article 9, Part 5.

Pursuant to NCGS § 130A-310.35(b), the Prospective Developer must file a certified copy of this Notice within 15 days of Prospective Developer's receipt of DENR's approval of the Notice or Prospective Developer's entry into the Brownfields Agreement, whichever is later. Pursuant to NCGS § 130A-310.35(c), the copy of the Notice certified by DENR must be recorded in the grantor index under the names of the owners of the land and, if Prospective Developer is not the owner, also under Prospective Developer's name.

The Brownfields Property consists of approximately 65.47 acres of land located at the western terminus of Flemington Drive, just west of US Highway 421, in Wilmington, New Hanover County, North Carolina. The Brownfields Property was first developed in August 1973 by Waste Industries, Inc. as a solid waste landfill. The landfill was closed in June 1979, and the Brownfields Property has been abandoned since that time. As a result of the deposition of waste materials in the landfill, soil and groundwater contamination is known to exist at the Brownfields

RETURN TO

1

R. Hochuli
350-7911

Property. Prospective Developer has committed itself to make no use of the Brownfields Property, without DENR approval, other than as a recreational and competition level soccer complex.

A Brownfields Agreement between Prospective Developer and DENR is attached hereto as **Exhibit A**. It sets forth the use that may be made of the Brownfields Property and the measures to be taken to protect public health and the environment, and is **required by NCGS § 130A-310.32**.

Attached hereto as **Exhibit B** is the survey plat required by NCGS § 130A-310.35(a). It is a plat of areas designated by DENR that has been prepared and certified by a professional land surveyor and that meets the requirements of NCGS § 47-30. That plat contains the following information required by NCGS § 130A-310.35(a):

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location and quantity of regulated substances and contaminants known to exist on the Brownfields Property. The following table also sets forth the type and quantity of such substances (in this case, the type and quantity of groundwater contaminants known to exist outside the footprint of the Brownfields Property's waste cells), in micrograms per kilogram, the equivalent of parts per billion:

Groundwater Contaminant:	Maximum Concentration
Diesel-Range Organics	200
Gasoline-Range Organics	350
Chromium	360
Lead	78
Mercury	1.4

Attached hereto as **Exhibit C** is a legal description of the Brownfields Property that would be sufficient as a description of that property in an instrument of conveyance.

LAND USE RESTRICTIONS

NCGS 130A-310.35(a) also requires that the Notice identify any restrictions on the current or future use of the Brownfields Property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the Brownfields Property and that are designated in the Brownfields Agreement. **The restrictions shall remain in force in perpetuity unless canceled by the Secretary of DENR (or its successor in function), or his/her designee, after the hazards have been eliminated, pursuant to NCGS § 130A-310.35(e). Those restrictions are hereby imposed on the Brownfields Property, and are as follows:**

1. No water supply wells may be installed or used at the Brownfields Property.

2. No mining activities may be conducted on the Brownfields Property.

3. Except as provided in paragraph 10.i. of the Brownfields Agreement attached hereto as Exhibit A, no disturbance, displacement or removal of soil in areas of the Brownfields Property denominated "PROHIBITED" on the plat attached hereto as Exhibit B is permitted without prior notification to and approval of DENR or its successor in function, any sampling of such waste material required by DENR, and submittal to DENR or its successor in function of analyses of such sampling along with plans and procedures to protect human health and the environment during the proposed activities. In the event such activities are approved by DENR or its successor in function, the activities shall be conducted in strict accordance with all local, state and federal legal provisions concerning sampling, characterization, handling, transportation and disposal of waste material, and anyone conducting such activities shall provide to DENR a report of such activities as required in said subparagraph 10.i. If any existing landfill waste material at the Brownfields Property is disturbed other than pursuant to this restriction number 3, the owner of any affected portion of the Brownfields Property shall effect sampling, characterization, handling, transportation and disposal of such waste material in strict accordance with local, State, and federal legal provisions, except that such waste material may not be disposed of on the Brownfields Property even if to do so would otherwise be in compliance with law, and shall, no later than seven (7) days following discovery of the disturbance, report the disturbance to DENR in writing. Thereafter, the owner of any affected portion of the Brownfields Property shall report when and as required by DENR regarding the disturbance, which reporting shall include, at a minimum, a written report that describes the nature and extent of the disturbance, the sampling, characterization, and handling of the waste material, and its transportation and disposal.

4. No activities which result in direct exposure to or removal of groundwater (for example, construction or excavation activities which encounter or expose groundwater) may be conducted on the Brownfields Property without prior sampling and analysis of groundwater in the area where such activities are to be conducted, submittal of the analytical results to DENR or its successor in function along with plans and procedures to protect human health and the environment during those activities, and approval of those activities by DENR or its successor in function.

5. No basements and no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater under the Brownfields Property may be constructed on the Brownfields Property. Reservoirs and ponds used exclusively for irrigation purposes and supplied by groundwater originating other than on the Brownfields Property (e.g., groundwater from adjoining properties and water from the City of Wilmington) may be constructed in areas of the Brownfields Property not denominated "PROHIBITED" on the plat constituting Exhibit B of this Notice if: (A) any such reservoir or pond's base is at least two (2) feet above the top of the shallowest groundwater at the location of such reservoir or pond; and (B) the testing and use requirements set forth in subparagraph 10.f of the Brownfields Agreement attached hereto as Exhibit A are complied with in connection with any such reservoir or pond.

6. No groundwater derived from adjoining properties may be used at the Brownfields Property unless, prior to its initial use and no less frequently than once every six months thereafter, the owner of any portion of the Brownfields Property where such groundwater is proposed to be used satisfies DENR that such groundwater does not exceed the groundwater standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2L, Rule .0202; and

7. Within seven (7) days of each anniversary of the effective date of the Brownfields Agreement attached hereto as Exhibit A, the owner(s) of the Brownfields Property shall each submit a notarized Land Use Restrictions Update to DENR certifying that (A) this Notice containing these seven (7) Land Use Restrictions remains recorded at the New Hanover County Register of Deeds office; (B) the New Hanover County Ordinance referenced in Paragraph 4.h. of said Brownfields Agreement remains in effect; (C) if the Brownfields Property is in use, the air, groundwater quality, infiltration and pond water monitoring activities required, respectively, pursuant to subparagraphs 10.c., 10.d., 10.e. and 10.f. of said Brownfields Agreement are being conducted; (D) these Land Use Restrictions are being complied with; and (E) if the Brownfields Property is in use, the cap has been enhanced in accordance with paragraph 10.b. of said Brownfields Agreement and is functioning as required by that subparagraph. Each Land Use Restrictions Update shall also include a complete record of any erosion, erosion repairs or other activities affecting the Land Use Restrictions or, if the Brownfields Property is in use, affecting the integrity of the cap. The Land Use Restrictions Update shall be addressed to the DENR official referenced in paragraph 29.a. of Exhibit A hereto.

ENFORCEMENT

Pursuant to NCGS § 130A-310.35(f), the above land use restrictions shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. The land use restrictions shall be enforced by any owner of the Brownfields Property. The land use restrictions may also be enforced by DENR through the remedies provided in NCGS 130A, Article 1, Part 2 or by means of a civil action; by any unit of local government having jurisdiction over any part of the Brownfields Property; and by any person eligible for liability protection under the Brownfields Property Reuse Act who will lose liability protection if the restrictions are violated. Any attempt to cancel any or all of this Declaration without the approval of the Secretary of DENR (or its successor in function), or his/her delegate, shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS

When any portion of the Brownfields Property is sold, leased, conveyed or transferred,

pursuant to NCGS § 130A-310.35(d) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the Brownfields Property has been classified and, if appropriate, cleaned up as a brownfields property under the Brownfields Property Reuse Act.

IN WITNESS WHEREOF, Prospective Developer has caused this instrument to be duly executed this 26 day of July, 2004.

Cape Fear Soccerplex, LLC

By: B. Mason Hawfield, Manager
Name: Mason Hawfield, Manager

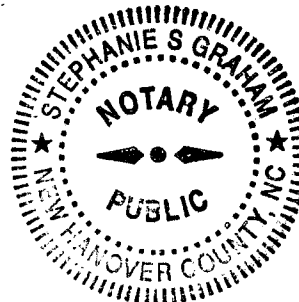
NORTH CAROLINA
NEW HANOVER COUNTY

I, Stephanie S. Graham, a Notary Public of the County and State aforesaid, certify that Mason Hawfield personally came before me this day and acknowledged that he a Member of Cape Fear Soccerplex, LLC, a North Carolina Limited Liability Corporation, and its Manager, and that by authority duly given and as the act of the limited liability company, the foregoing Notice of Brownfields Property was signed in its name by him.

WITNESS my hand and official stamp or seal, this 26th day of July, 2004

[Signature]
Name:
Notary Public

My Commission expires: 2-27-07



**APPROVAL AND CERTIFICATION OF NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES**

The foregoing Notice of Brownfields Property is hereby approved and certified.

North Carolina Department of Environment and Natural Resources

By:

Dexter R. Matthews
Dexter R. Matthews, Director, Division of Waste Management

7-13-04
Date

CERTIFICATION OF REGISTER OF DEEDS

The foregoing Notice of Brownfields Property is certified to be duly recorded at the date and time, and in the Book and Page, shown on the first page hereof.

Register of Deeds for New Hanover County

By:

Name typed or printed: _____
Deputy/Assistant Register of Deeds

Date

EXHIBIT A

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF: Cape Fear Soccerplex, LLC

UNDER THE AUTHORITY OF THE)	BROWNFIELDS AGREEMENT re:
BROWNFIELDS PROPERTY REUSE ACT OF)	Former Flemington Landfill
1997, 130A-310.30, <u>et seq.</u>)	Flemington Street
)	Wilmington, New Hanover County

I. INTRODUCTION

This Brownfields Agreement (this "Agreement") is made and entered into by and between the North Carolina Department of Environment and Natural Resources ("DENR") and Cape Fear Soccerplex, LLC (collectively the "Parties") pursuant to the Brownfields Property Reuse Act of 1997, N.C.G.S. § 130A-310.30, et seq. (the "Act").

Cape Fear Soccerplex, LLC is a North Carolina limited liability company whose business address is 6726 Netherlands Drive, #700, Wilmington, NC 28405. Cape Fear Soccerplex, LLC is a wholly owned subsidiary of Cape Fear Soccer Association, Inc. Cape Fear Soccerplex, LLC owns approximately 65.47 acres of land located at the western terminus of Flemington Drive, just west of US Highway 421, in Wilmington, New Hanover County, North Carolina, which it intends to redevelop as a recreational and competition level soccer complex. The subject property is the site of the former Flemington Landfill, a state/county permitted sanitary landfill that was operated by Waste Industries, Inc. between August 1973 and June 1979. A legal description and a location map of the property which is the subject of this Agreement (the "Property") are attached hereto as Exhibit 1.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and

limitations contained in Section VIII (Certification), Section IX (DENR's Covenant Not to Sue and Reservation of Rights) and Section X (Prospective Developer's Covenant Not to Sue), the potential liability of Cape Fear Soccerplex, LLC for contaminants at the property which is the subject of this Agreement.

The Parties agree that Cape Fear Soccerplex, LLC's entry into this Agreement, and the actions undertaken by Cape Fear Soccerplex, LLC in accordance with this Agreement, do not constitute an admission of any liability by Cape Fear Soccerplex, LLC.

The resolution of this potential liability, in exchange for the benefit Cape Fear Soccerplex, LLC shall provide to DENR, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in the Act or elsewhere in N.C.G.S. 130A, Article 9 shall have the meaning assigned to them in those statutory provisions, including any amendments thereto.

1. "Property" shall mean the Brownfields property which is the subject of this Agreement, and which is described and depicted in Exhibit 1 of this Agreement.

2. "Prospective Developer" shall mean Cape Fear Soccerplex, LLC.

III. STATEMENT OF FACTS

3. Prospective Developer has acquired the Property, which consists of 65.47 acres of land located at the western terminus of Flemington Drive, in Wilmington, New Hanover County, North Carolina. Prospective Developer intends to redevelop the Property as the Cape Fear Soccerplex, a recreational and competition level soccer complex.

4. For purposes of this Agreement, DENR relies on information regarding Flemington Landfill contained in DENR files and on representations by the Prospective Developer as to the prior and current use of the Property and of the adjoining area. The representations by the Prospective Developer are based on information contained in Prospective Developer's Brownfields Letter of Intent, dated December 18, 2000, and on information contained in various documents and reports either obtained or commissioned by Prospective Developer including the following: *Statistical Analysis Report, Old Flemington Landfill*, dated August 20, 1998, and prepared by Environmental Investigations, Inc.; letter report concerning permeability of existing site soils, and letter report concerning the use of lysimeters at the Property, both prepared by Dr. A. R. Rubin, North Carolina State University; *Summary of Permeability Testing, Proposed SoccerPlex, Report of Soil and Groundwater Testing, Wilmington Materials Site*; reports of groundwater testing dated July 25, 2001, and November 29, 2001, respectively, each prepared by TerraTech Engineers, Inc.; and Report of Methane Sampling dated December 11, 2001, prepared by TerraTech Engineers, Inc. Collectively, the information regarding the Flemington Landfill contained in DENR files and the above documents and reports cited in this paragraph are referred to hereinafter as the "environmental reports."

a. Prior to its development as a landfill, the Property was used as a sand mine and borrow pit.

b. The Property was developed as a solid waste landfill in August 1973 by Waste Industries, Inc. under a lease from the Royal family, the property owner. Waste Industries, Inc. operated the landfill under permits issued by New Hanover County and the State of North Carolina.

It is known that the landfill received both domestic and industrial solid waste, but the exact types and volumes of waste deposited at the Property are not known. Waste Industries, Inc. closed the landfill in June 1979.

c. Subsequent to the identification of groundwater quality problems by analytical data in an April 1978 report on groundwater sampling of monitoring wells located between the landfill and the nearby community of Flemington, the State of North Carolina ("State") conducted a groundwater study to determine what impact the landfill was having on local groundwater quality. The State study concluded that leachate from the landfill had affected groundwater quality in the area, including private water supply wells.

d. In response to complaints from the community of Flemington, the United States Environmental Protection Agency ("EPA") conducted three groundwater investigations in the area of the landfill during 1979. The EPA investigations also concluded that landfill leachate had affected groundwater quality in the area of the landfill.

e. Based on the results of the State and EPA groundwater studies, the United States on behalf of the EPA filed a civil lawsuit in January 1980 alleging that operation of the landfill had contaminated groundwater beneath the landfill and that the migration of this contaminated water posed an imminent and substantial endangerment to human health and the environment in the area of the landfill. In January 1981, EPA's lawsuit was dismissed by the U.S. District Court.

f. In May 1984, the U.S. Court of Appeals for the Fourth Circuit reversed the lower District Court's decision and remanded the case to the U.S. District Court, and in August 1987, the defendants entered a Partial Consent Decree with EPA in which defendants agreed, among other

requirements, to provide an alternative water supply for groundwater users in the projected path of the contaminant plume, and to perform a groundwater investigation in the vicinity of the landfill.

Following its review of the data generated by the required investigation, its request for public comment on its preliminary decision on remedial action for the site, and a public meeting regarding the site, EPA issued a Final Agency Decision in June 1995 that groundwater remedial action would not be required at this site.

g. In April 1996, the United States (on behalf of EPA) and the defendants entered into a Final Consent Decree in which defendants agreed to conduct annual groundwater sampling of selected monitoring wells for three years. The final groundwater sampling of site monitoring wells was conducted in July 1998 and the results indicated the presence of benzene in concentrations exceeding North Carolina groundwater standards. In accordance with terms of the Final Consent Decree, because a statistical analysis of the analytical results indicated that a significant increase in groundwater contamination had not occurred at the landfill site during the three years of monitoring, groundwater monitoring at the site was discontinued and all site monitoring wells were subsequently abandoned.

h. As an institutional control on the use of groundwater in the area of the landfill, on August 21, 1995 New Hanover County enacted an ordinance (County Code, Chapter 12, Article VIII, Sections 12-67 et seq.; recodified at Chapter 56, Article III, Sections 56-181 et seq.) that requires permitting of all new well construction in the area of the landfill.

i. The ownership and use of land adjoining the Property is as follows: land to the north, south and west is owned by Riverfront Company, LLC and is used for sand mining; to the east

are railroad tracks on property owned by the CSX Railroad (formerly Seaboard Coast Railroad).

5. For purposes of this Agreement DENR relies on Prospective Developer's representations that Prospective Developer's involvement with the Property has been limited to the following:

a. Prospective Developer submitted a Letter of Intent, dated December 18, 2000, and prepared by Sungate Design Group, P.A., Prospective Developer's lead consultant, seeking entry into the North Carolina Brownfields Program and a Brownfields Agreement for the Property;

b. Prospective Developer's lead consultant worked with DENR to discuss and identify the technical problems that must be resolved to ensure that the Property is or can be made safe for the use committed to by Prospective Developer in its Letter of Intent, and to identify the specific environmental data and other information that Prospective Developer would be required to submit to DENR in order to demonstrate, to DENR's satisfaction, that the technical problems could be and had been resolved;

c. Prospective Developer has worked with City of Wilmington, New Hanover County, State agencies, and private consultants, contractors, and design professionals to identify and resolve the technical and permitting requirements related to the safe redevelopment of the Property;

d. Prospective Developer has commissioned investigations, referenced above in paragraph 4 of this Agreement, of groundwater quality in areas outside of the footprint of the waste cells at the Property and of air quality and soil permeability at the Property to establish pre-construction baseline environmental conditions at the Property, to aid in defining design parameters for the proposed soccer complex, and to provide the basis for risk identification and risk management decisions for the Property; and

e. Prospective Developer acquired the Property on June 5, 2001.

6. The environmental reports include the following information regarding groundwater contamination at the Property (in micrograms per kilogram, the equivalent of parts per billion), outside the footprint of the waste cells:

Groundwater Contaminant	Maximum Concentration
Diesel-Range Organics	200
Gasoline-Range Organics	350
Chromium	360
Lead	78
Mercury	1.4

7. Prospective Developer has provided DENR with information, or sworn certifications regarding that information on which DENR relies for purposes of this Agreement, necessary to demonstrate that:

a. Prospective Developer and any parent, subsidiary, or other affiliate has substantially complied with federal and State laws, regulations and rules for protection of the environment, and with the other agreements and requirements cited at N.C.G.S. § 130A-310.32(a)(1);

b. As a result of the implementation of this Agreement, the Property will be suitable for the uses specified in this Agreement while fully protecting public health and the environment;

c. Prospective Developer's reuse of the Property will produce a public benefit commensurate with the liability protection provided Prospective Developer hereunder;

d. Prospective Developer has or can obtain the financial, managerial and technical means to fully implement this Agreement and assure the safe use of the Property; and

e. Prospective Developer has complied with all applicable procedural

requirements.

8. Prospective Developer has paid the \$2,000 fee to seek a brownfields agreement required by N.C.G.S. § 130A-310.39(a)(1). Pursuant to N.C.G.S. § 130A-310.39(a)(2), the procedure upon which Prospective Developer and DENR have agreed for payment of the full cost to DENR and the North Carolina Department of Justice ("DOJ") of all activities related to this Agreement is that Prospective Developer shall pay any amount by which DOJ's hours multiplied by \$36.24 per hour exceeds the \$2,000 fee (DENR has incurred no costs).

IV. BENEFIT TO COMMUNITY

9. Prospective Developer believes that its development of the Property will provide the following public benefits:

- a. Conversion of the former landfill site, currently an abandoned, idled, and underused community eyesore into an attractive, maintained, and useful green space;
- b. A long and greatly needed playing space for 6,000 youth and adults as well as a soccer tournament hosting facility for southeastern North Carolina with its ancillary benefits;
- c. An example of quality redevelopment in the community that may lead to additional redevelopment in the surrounding area;
- d. An economic boost to area hotel, food services, and other segments of the local economy through an increased demand for these services realized during regional soccer tournaments; and
- e. A stable, low permeability cap across the landfill that will further reduce the potential for risk/threat to public health and the environment.

IX. DENR'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

17. The Prospective Developer shall not be liable to DENR, and DENR covenants not to sue Prospective Developer, for remediation of the Property except as specified in this Agreement, unless:

a. The Prospective Developer fails to comply with this Agreement and, within any period that DENR provides for curing noncompliance, Prospective Developer fails to so cure.

b. The activities conducted on the Property by or under the control or direction of the Prospective Developer increase the risk of harm to public health or the environment, in which case Prospective Developer shall be liable for remediation of the areas of the Property, remediation of which is required by this Agreement, to the extent necessary to eliminate such risk of harm to public health or the environment.

c. A land use restriction set out in the Notice of Brownfields Property required under N.C.G.S. 130A-310.35 is violated while the Prospective Developer owns the Property, in which case the Prospective Developer shall be responsible for remediation of the Property to current standards.

d. The Prospective Developer knowingly or recklessly provided false information that formed a basis for this Agreement or knowingly or recklessly offers false information to demonstrate compliance with this Agreement or fails to disclose relevant information about contamination at the Property.

e. New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the Property that has not been remediated to current standards, unless this Agreement is amended to include any previously

V. WORK TO BE PERFORMED

10. Based on the information in the environmental reports, and subject to imposition of and compliance with the land use restrictions (the "Land Use Restrictions") cited below in paragraph 10.a., and except as may be required pursuant to Section IX of this Agreement (Reservation of Rights and DENR's Covenant Not to Sue and Reservation of Rights), active remediation at the Property shall be unnecessary.

a. Based on the information revealed in the environmental reports, DENR has determined that it is necessary for the Prospective Developer to impose the following Land Use Restrictions, which will run with the land, to make the Property safe for the uses specified in this Agreement while fully protecting public health and the environment:

- i. No water supply wells may be installed or used at the Property.
- ii. No mining activities may be conducted on the Property.
- iii. Except as provided in paragraph 10.i. below, no disturbance, displacement or removal of soil in areas of the Property denominated "PROHIBITED" on the plat component of the Notice of Brownfields Property filed in connection with this Agreement is permitted without prior notification to and approval of DENR or its successor in function, any sampling of such waste material required by DENR, and submittal to DENR or its successor in function of analyses of such sampling along with plans and procedures to protect human health and the environment during the proposed activities. In the event such activities are approved by DENR or its successor in function, the activities shall be conducted in strict accordance with all local, state and federal legal provisions concerning sampling, characterization, handling, transportation and

disposal of waste material, and anyone conducting such activities shall provide to DENR a report of such activities as required below in subparagraph 10.i. If any existing landfill waste material at the Property is disturbed other than pursuant to this subparagraph 10.a.iii., the owner of any affected portion of the Property shall effect sampling, characterization, handling, transportation and disposal of such waste material in strict accordance with local, State, and federal legal provisions, except that such waste material may not be disposed of on the Property even if to do so would otherwise be in compliance with law, and shall, no later than seven (7) days following discovery of the disturbance, report the disturbance to DENR in writing. Thereafter, the owner of any affected portion of the Property shall report when and as required by DENR regarding the disturbance, which reporting shall include, at a minimum, a written report that describes the nature and extent of the disturbance, the sampling, characterization, and handling of the waste material, and its transportation and disposal.

iv. No activities which result in direct exposure to or removal of groundwater (for example, construction or excavation activities which encounter or expose groundwater) may be conducted on the Property without prior sampling and analysis of groundwater in the area where such activities are to be conducted, submittal of the analytical results to DENR or its successor in function along with plans and procedures to protect human health and the environment during those activities, and approval of those activities by DENR or its successor in function.

v. No basements and no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater under the Property may be constructed on the Property. Reservoirs and ponds used exclusively for irrigation purposes and supplied by

groundwater originating other than on the Property (e.g., groundwater from adjoining properties and water from the City of Wilmington) may be constructed in areas of the Property not denominated "PROHIBITED" on the plat component of the Notice of Brownfields Property filed in connection with this Agreement if: (A) any such reservoir or pond's base is at least two (2) feet above the top of the shallowest groundwater at the location of such reservoir or pond; and (B) the testing and use requirements set forth in subparagraph 10.f below are complied with in connection with any such reservoir or pond.

vi. No groundwater derived from adjoining properties may be used at the Property unless, prior to its initial use and no less frequently than once every six months thereafter, the owner of any portion of the Property where such groundwater is proposed to be used satisfies DENR that such groundwater does not exceed the groundwater standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2L, Rule .0202; and

vi. Within seven (7) days of each anniversary of the effective date of this Agreement, the owner(s) of the Property shall each submit a notarized Land Use Restrictions Update to DENR certifying that (A) the Notice of Brownfields Property containing the Land Use Restrictions remains recorded at the New Hanover County Register of Deeds office; (B) the New Hanover County Ordinance referenced above in Paragraph 4.h. remains in effect; (C) the air, groundwater quality, infiltration and pond water monitoring activities required pursuant to subparagraphs 10.c., 10.d., 10.e. and 10.f. below, respectively, are being conducted; (D) the Land Use Restrictions are being complied with; and (E) all caps installed at the Property in accordance with paragraph 10.b. of this Agreement are in place and in good repair. Each Land Use Restrictions

Update shall also include a complete record of any erosion, erosion repairs or other activities affecting the Land Use Restrictions or integrity of the cap.

b. Prior to the Property's use as a soccer complex, Prospective Developer shall submit to DENR sufficient data and other information to satisfy DENR that the cap at the Property has been enhanced such that:

i. its thickness extends at least two feet above the shallowest waste material at the Property, as demonstrated by a report of cap thickness and soil borings;

ii. it reduces the infiltration that occurred under the prior cap by at least two orders of magnitude (i.e., one hundred-fold) through any combination of soil depth, permeability, texture, artificial liners, or vegetation slope; and

iii. through grading, vegetation and maintenance it directs runoff only to stormwater infiltration basins along the perimeter of the Property, outside the boundary of the waste material, in areas of high permeability sands.

c. The following conditions regarding capping shall also apply at the Property, compliance with which shall be determined by DENR:

i. All elements of the irrigation system shall be installed, operated and maintained in a manner that ensures the integrity and functionality of the cap;

ii. Unless otherwise approved by DENR, driveway and parking surfaces shall not be paved with asphalt or concrete or other impervious materials. Driveway and parking surfaces shall be constructed of marl or other pervious medium, and shall allow methane venting.

Any impervious surfaces, including but not limited to building slabs, shall also allow methane

venting. The design plans for pervious driving and parking surfaces and for any impervious surface covering shall be subject to DENR pre-construction approval. The Property may not be used as a soccer complex until DENR has approved a report submitted by Prospective Developer on post-construction methane sampling at the sites of pervious driveway and parking surfaces, and in the vicinity of any impervious surface covering installed at the Property.

iii. Prospective Developer shall manage and maintain all vegetative matter on the Property in a manner that minimizes erosion, and shall promptly repair any erosion that occurs. Should erosion result in the exposure of waste material, Prospective Developer shall (A) immediately upon becoming aware of such occurrence prevent public access to the exposed waste material until the cap is re-installed; (B) within three (3) days of becoming aware of such occurrence notify DENR of the occurrence and re-install a cap that extends at least two feet above the shallowest waste material at the Property; and (D) notify DENR of the re-installation of the cap within three (3) days of its re-installation.

d. Within the thirty (30) days prior to each anniversary of the effective date of this Agreement, Prospective Developer shall document to DENR the results of methane monitoring in monitoring wells M-1 and M-2, or in an equal number of replacement wells satisfactory to DENR or its successor in function. Prior to recreational use of each portion of the soccer complex, Prospective Developer shall document to DENR procedures used for, and analyses of, methane monitoring in that portion. In its annual Land Use Restrictions Update referenced above in subparagraph 10.a.vi., Prospective Developer shall set forth the procedures used for, and analyses of, all methane sampling that has occurred since the previous Update. In the event any sampling

indicates the presence of sufficient methane to pose an imminent threat to public health, as determined by DENR, Prospective Developer shall take any actions DENR requires to eliminate that threat that are within DENR's authority to compel.

e. Within the thirty (30) days prior to each anniversary of the effective date of this Agreement, in conformance with groundwater sampling procedures described in the most recent edition of the *Guidelines for Assessment and Cleanup* of the Inactive Hazardous Sites Branch of DENR's Superfund Section, Prospective Developer shall sample monitoring wells GW-1, GW-2, GW-3, GW-4, W-1, W-3 and W-5, or an equal number of replacement wells satisfactory to DENR or its successor in function, for pH, specific conductance, turbidity and temperature, have the groundwater samples analyzed by approved EPA methods for volatile organic compounds (VOCs), priority pollutant metals, nitrate-nitrite, ammonia, chloride, chemical oxygen demand (COD), and total organic compounds (TOC) at a North Carolina-certified laboratory, and submit the sampling analyses to DENR. Prior to recreational use of each portion of the soccer complex, Prospective Developer shall document to DENR procedures used for, and analyses of, groundwater sampling in the monitoring well(s) nearest to that portion. In its annual Land Use Restrictions Update referenced above in subparagraph 10.a.vi., Prospective Developer shall set forth the procedures used for, and analyses of, all groundwater sampling that has occurred since the previous Update. In the event any sampling indicates to DENR a significant increase in contaminants attributable to landfill leachate, Prospective Developer shall amend its schedules and/or methods of irrigation and nutrient application, re-sample any site monitoring well that showed such an increase in contaminants within sixty (60) days of the observed increase, submit to DENR the analyses of such re-sampling within

thirty (30) days of such re-sampling, and take any other action DENR requires to minimize the likelihood of infiltration of moisture into the former landfill waste cells.

f. Subject to DENR approval, Prospective Developer shall install pan lysimeters or similar devices in irrigated areas at the Property, use these devices to monitor the depth of irrigation moisture and nutrient infiltration into the turf and the top eighteen (18) inches of soil of the cap described above in subparagraph 10.b., and maintain a log of irrigation schedules and lysimeter monitoring results in order to establish the relationship between irrigation and infiltration rates. Prior to recreational use of each portion of the soccer complex, Prospective Developer shall document to DENR procedures and analyses of infiltration monitoring regarding that portion. In its annual Land Use Restrictions Update referenced above in subparagraph 10.a.vi., Prospective Developer shall set forth the procedures used for, and analyses of, all infiltration monitoring that has occurred since the previous Update. The target depth of moisture infiltration at the Property shall be eighteen (18) inches below the ground surface. Within three (3) days after becoming aware of any moisture infiltration exceeding the target depth, Prospective Developer shall notify DENR of such exceedance and either (A) amend the schedules and/or methods of irrigation and nutrient application used at affected portions of the Property and provide to DENR, within sixty (60) days after becoming aware of such exceedance, new data that demonstrates the target depth has been re-established; or (B) cease recreational use of affected portions of the Property until such time as new data demonstrates the target infiltration depth has been re-established.

g. Within the thirty (30) days prior to each anniversary of the effective date of this Agreement, and in conformance with sampling procedures described in the guidelines published in

the most recent edition of the *Guidelines for Assessment and Cleanup* of the Inactive Hazardous Sites Branch of DENR's Superfund Section, Prospective Developer shall sample the water from any pond used as a source of irrigation water for the Property, have the samples analyzed by approved EPA methods for VOCs, priority pollutant metals and nitrate-nitrite at a North Carolina-certified laboratory, and submit the sampling analyses to DENR. In addition to the pond sampling schedule cited above in this subparagraph, prior to the use of any pond for irrigation purposes at the Property, Prospective Developer shall submit to DENR the procedures used for sampling and an analysis of the pond water. The analytical results must demonstrate that the pond water does not contain an exceedance of the groundwater standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2L, Rule .0202. In its annual Land Use Restrictions Update referenced above in paragraph 10.a.vi., Prospective Developer shall set forth the procedures used for, and analyses of, all pond sampling that has occurred since the previous Update. In the event pond sampling indicates any exceedances of the groundwater standards contained in the North Carolina Administrative Code, Title 15A, Subchapter 2L, Prospective Developer shall discontinue the use of the relevant pond(s). Any re-use of such pond(s) will be subject to prior DENR approval based on pond re-sampling results indicating no such exceedances.

h. DENR may extend the intervals between methane, groundwater, lysimeter and pond sampling events referenced above in subparagraphs 10.c.-f. upon the written request of Prospective Developer. In evaluating such a request, DENR may consider factors related to protection of public health and the environment such as data from past sampling events and schedule of land use.

i. If water supply wells or other points of groundwater access, other than the groundwater monitoring wells referenced above in subparagraph 10.d., are discovered on the Property during redevelopment, Prospective Developer shall effect their proper abandonment in accordance with Title 15A of the North Carolina Administrative Code, Subchapter 2C, and shall submit to DENR a report of the abandonment activities and results within thirty (30) days of conducting such activities.

j. Prospective Developer shall maintain a sign at the Property indicating that the site has previously been used as a landfill.

k. Simultaneously with Prospective Developer's notification of the public, pursuant to N.C.G.S. § 130A-310.34, of its planned redevelopment activities at the Property, Prospective Developer shall send a copy of such notification to each of the Settling Defendants in United States of America v. Waste Industries, Inc., et al., 80-4-CIV-7 (Eastern District of North Carolina) at the addresses provided for them on Exhibit 2 hereto.

l. The desired result of the above-referenced Land Use Restrictions, requirements for air, groundwater, infiltration, and surface water monitoring and reporting, cap installation and maintenance, abandonment of certain groundwater access points, and landfill waste disposal are to make the Property suitable for the uses specified in this Agreement while fully protecting public health and the environment.

m. The guidelines, including parameters, principles and policies, within which the desired results are to be accomplished are those embodied in the current version of the *Guidelines for Assessment and Cleanup* of the Inactive Hazardous Sites Branch of DENR's Superfund Section.

n. The consequences of achieving or not achieving the desired results will be a site that is suitable or is not suitable for the uses specified in this Agreement while fully protecting public health and the environment.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

11. Commencing upon the effective date of this Agreement, Prospective Developer agrees to provide to DENR, its authorized officers, employees, representatives, and all other persons performing response actions under DENR oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Property, to the extent access to such other property is controlled by the Prospective Developer, for the purposes of performing or overseeing response actions at the Property under applicable law. DENR agrees to provide reasonable notice to the Prospective Developer of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, DENR retains all of its authorities and rights, including enforcement authorities related thereto, under the Act and any other applicable statute or regulation, including any amendments thereto.

12. DENR has approved, pursuant to N.C.G.S. § 130A-310.35, a Notice of Brownfields Property for the Property containing, inter alia, the Land Use Restrictions set forth in Section V (Work to Be Performed) of this Agreement. Pursuant to N.C.G.S. § 130A-310.35(b), within 15 days of the effective date of this Agreement Prospective Developer shall file the Notice of Brownfields Property in the New Hanover County, North Carolina register of deeds' office, and within three (3) days thereafter shall furnish DENR a copy containing a certification by the register of deeds that the

Notice has been recorded and the book and page number where recorded.

13. This Agreement shall be attached as Exhibit A to the Notice of Brownfields Property. Subsequent to recordation of said Notice, any deed or other instrument conveying an interest in the Property shall contain the following notice: "The property which is the subject of this instrument is subject to the Brownfields Agreement attached as Exhibit A to the Notice of Brownfields Property recorded in the New Hanover County land records, Book ____, Page ____." A copy of any such instrument shall be sent to the persons listed in Section XV (Notices and Submissions), though financial figures related to the conveyance may be redacted.

14. The Prospective Developer shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation. The Prospective Developer shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section V (Work to be Performed) and Section XI (Parties Bound/Transfer of Covenant) of this Agreement.

VII. DUE CARE/COOPERATION

15. The Prospective Developer shall exercise due care at the Property with respect to regulated substances and shall comply with all applicable local, State, and federal laws and regulations, including, without limitation, laws and regulations requiring notification of actual or threatened contaminant releases such as N.C.G.S. 130A-310.1 and 143-215.84, and Section 103 of CERCLA, 42 U.S.C. § 9603. The Prospective Developer recognizes that remediation at the Property

may interfere with the Prospective Developer's use of the Property, and may require closure of its operations or a part thereof. Prospective Developer agrees to cooperate fully with any remediation of the Property by DENR and further agrees not to interfere with any such remediation. DENR agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Prospective Developer's operations by any such remediation.

VIII. CERTIFICATION

16. By entering into this Agreement, the Prospective Developer certifies that, without DENR approval, it will make no use of the Property other than that committed to in the Letter of Intent dated December 18, 2000 by which it applied for this Agreement. That use is as a soccer complex for youth and adult recreational soccer. Prospective Developer also certifies that to the best of its knowledge and belief it has fully and accurately disclosed to DENR all information known to Prospective Developer and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any regulated substances at the Property and to its qualification for this Agreement, including the requirement that it not have caused or contributed to the contamination at the Property. If DENR determines that certifications provided by Prospective Developer have been violated, or that information provided by Prospective Developer is not materially accurate and complete, this Agreement, within the sole discretion of DENR, shall be null and void and DENR reserves all rights it may have, including the right to compel remediation of the Property to current standards by Prospective Developer pursuant to the following paragraph.

unreported contaminants and any additional areas of contamination. If this Agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by this Agreement.

f. The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the Property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the Property or (ii) the failure of remediation to mitigate risks to the extent required to make the Property fully protective of public health and the environment as planned in this Agreement.

g. The Department obtains new information about a contaminant associated with the Property or exposures at or around the Property that raises the risk to public health or the environment associated with the Property beyond an acceptable range and in a manner or to a degree not anticipated in this Agreement.

h. The Prospective Developer fails to file a timely and proper Notice of Brownfields Property under N.C.G.S. 130A-310.35.

18. After Prospective Developer has filed the Notice of Brownfields Property referenced above in paragraph 12 and has performed the work required under Section V (Work To Be Performed) of this Agreement involving installation of a cap and construction of a recreational and

competition level soccer complex at the Property, Prospective Developer may, within sixty (60) days after receiving from DENR an order to perform additional work at the Property, notify DENR in writing that it intends to cease its use of the Property by a date subject to DENR's reasonable approval in lieu of performing the additional work, unless DENR has ordered the additional work pursuant to any of the following provisions of this Agreement: Section VII (Due Care/Cooperation), subparagraphs 17.c. or 17.d., or subparagraph 17.f.(i) if the subject change in land use occurs at the Property while Prospective Developer owns it.

19. Except as may be provided herein, DENR reserves its rights against Prospective Developer as to liabilities beyond the scope of the Act, including those regarding petroleum underground storage tanks pursuant to Part 2A of Chapter 143 of the General Statutes.

20. This Agreement does not waive any applicable requirement to obtain a permit, license or certification.

X. PROSPECTIVE DEVELOPER'S COVENANT NOT TO SUE

21. In consideration of DENR's Covenant Not To Sue in Section IX of this Agreement and in recognition of the absolute State immunity provided in N.C.G.S. § 130A-310.37(b), the Prospective Developer hereby covenants not to sue and not institute any proceedings for any injury or claim arising from negotiating, entering, monitoring or enforcing this Agreement or the Notice of Brownfields Property referenced above in paragraph 12 or any other action implementing the Act.

XI. PARTIES BOUND/TRANSFER OF COVENANT

22. This Agreement shall apply to and be binding upon DENR, and on the Prospective Developer, its officers, directors, employees, and agents. Each signatory of a Party to this

Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

23. Except for N.C.G.S. § 130A-310.33(a)(1)-(5)'s provision of the Act's liability protection to certain persons to the same extent as to a prospective developer, no rights, benefits or obligations conferred upon Prospective Developer under this Agreement may be assigned or transferred to any person without the prior consent of DENR, in its sole discretion.

24. Prospective Developer agrees to pay the reasonable costs incurred by DENR to review any request by Prospective Developer for consent to assign or transfer the rights, benefits or obligations conferred upon Prospective Developer under this Agreement.

25. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and receive all the benefits, of this Agreement except as DENR and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement.

XII. DISCLAIMER

26. This Agreement in no way constitutes a finding by DENR as to the risks to public health and the environment which may be posed by regulated substances at the Property, a representation by DENR that the Property is fit for any particular purpose, nor a waiver of Prospective Developer's duty to seek applicable permits or of the provisions of N.C.G.S. § 130A-310.37.

XIII. DOCUMENT RETENTION

27. The Prospective Developer agrees to retain and make available to DENR all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for ten years following the effective date of this Agreement or until Prospective Developer's completion of the work to be performed at the Property to the satisfaction of DENR, whichever is longer, unless otherwise agreed to in writing by the Parties. At the end of ten years, the Prospective Developer shall notify DENR of the location of such documents and shall provide DENR with an opportunity to copy any documents at the expense of DENR.

XIV. PAYMENT OF ENFORCEMENT COSTS

28. If the Prospective Developer fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section V (Work to be Performed), it shall be liable for all reasonable litigation and other enforcement costs incurred by DENR to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

29. Unless otherwise required by DENR, all notices and submissions pursuant to this Agreement may be sent by prepaid first class U.S. mail, as follows:

a. for DENR:

Mr. Tony Duque
Brownfields Project Manager
Superfund Branch, DWM
Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, NC 27699-1646

b. for Prospective Developer:

Mr. Mason Hawfield
Manager
Cape Fear Soccerplex, LLC
6726 Netherlands Drive, #700
Wilmington, NC 28405

Notices and submissions sent by prepaid first class U.S. mail shall be effective on the third day following postmarking. Notices and submissions sent by hand or by other means affording written evidence of date of receipt shall be effective on such date.

XVI. EFFECTIVE DATE

30. The effective date of this Agreement shall be the earlier of the third day after DENR sends notice to Prospective Developer by prepaid first class U.S. mail, or the day DENR notifies Prospective Developer by facsimile, if DENR does so, that DENR has fully executed this Agreement after review of and response to any public comments received.

XVII. TERMINATION OF CERTAIN PROVISIONS

31. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

32. With regard to claims for contribution against Prospective Developer in relation to the

subject matter of this Agreement, the Parties hereto agree that the Prospective Developer is entitled to protection from such claims to the extent provided by N.C.G.S. § 130A-310.37(a)(5)-(6). The subject matter of this Agreement is all remediation taken or to be taken and response costs incurred or to be incurred by DENR or any other person in relation to the Property.

33. The Prospective Developer agrees that, with respect to any suit or claim for contribution brought by it in relation to the subject matter of this Agreement, it will notify DENR in writing no later than 60 days prior to the initiation of such suit or claim.

34. The Prospective Developer also agrees that, with respect to any suit or claim for contribution brought against it in relation to the subject matter of this Agreement, it will notify DENR in writing within 10 days of service of the complaint on it.

XIX. PUBLIC COMMENT

35. This Agreement shall be subject to a sixty-day public comment period dating from publication of the approved summary of the Notice of Intent to Redevelop a Brownfields Property required by N.C.G.S. § 130A-310.34 in the North Carolina Register or a newspaper of general circulation serving the area in which the Property is located, whichever shall occur later. After expiration of that period, or following a public meeting if DENR holds one pursuant to N.C.G.S. § 130A-310.34(c), DENR may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By:

Dexter R. Matthews
Dexter R. Matthews, Director, Division of Waste Management

7-13-04

Date

IT IS SO AGREED:

CAPE FEAR SOCCERPLEX, LLC

By:

B. Mason Hawfield
Mason Hawfield, Manager

7-26-04

Date

EXHIBIT 1

Legal Description

Beginning at a new iron pipe in the westerly right-of-way line of the CSX Transportation Company Railroad (130 foot right-of-way), formerly known as SCL Railroad. Said beginning pipe being located South 25 degrees 26 minutes 35 seconds West 2,481.30 feet, from NC Grid Station "Queensboro" said station having coordinates of North 194537.11 feet and East 2313797.78 feet, NAD 83. Said beginning pipe also being located South 79 degrees 51 minutes 34 seconds West 65.00 feet, from a point on the center-line of said CSX Transportation Company Railroad. Said point on said center-line being located South 10 degrees 08 minutes 26 seconds East 858.98 feet, from the intersection of said center-line with the center-line of Flemington Street, formerly known as Fayetteville Avenue (60 foot right-of-way) as shown on a map of "Flemington" recorded in Map Book 4 at Page 64 of the New Hanover County Registry. Said beginning pipe also being located 1,266.97 feet, as measured in a northerly direction along said westerly right-of-way line from an old concrete monument at the intersection of said westerly right-of-way line with the northerly right-of-way line of Sampson Street (70 foot right-of-way) as shown on a Map of Survey of Oak Grove Cemetery recorded in Map Book 8 at Page 68 of said Registry. Running thence from said beginning pipe.

1. North 83 degrees 43 minutes 30 seconds West 1,220.03 feet, passing through a new iron pipe 406.68 feet, and 815.36 feet, to a new iron pipe; thence
2. North 21 degrees 01 minute 04 seconds West 2,124.93 feet, passing through a new iron pipe AT 531.23 feet, 1,062.46 feet, and 1,593.70 feet, to a new iron pipe. Last said pipe being a southerly corner of a 20.52 acre tract shown on a map recorded in Map Book 39 at Page 210 of said Registry; thence
3. North 06 degrees 16 minutes 54 seconds East 98.39 feet, along an easterly line of said 20.52 acre tract to a new iron pipe; thence
4. South 83 degrees 43 minutes 06 seconds East 1566.97 feet, along a southerly line of 20.52 acre tract, to an old iron pipe on the westerly right-of-way line of said CSX Transportation Company Railroad. Last said point being on a curve having a radius of 2,770.70 feet; thence
5. With arc of said curve and with the westerly right-of-way line of said CSX Transportation Company Railroad, as it curves to the west, to a new iron pipe at the southerly end of said curve that is South 15 degrees 02 minutes 24 seconds East a chord distance of 473.29 feet, from the preceding point; thence
6. South 10 degrees 08 minutes 26 seconds East 1,611.35 feet, along said westerly right-of-way line, to the point of beginning.

The above described tract contains 65.47± acres. The same being a portion of the Fleming and Royal Tract. Being also the same property described in that "Map of a Survey for Cape Fear Soccer Association, Inc." dated November 22, 2000, by Sherwin D. Cribb, PLS.

EXHIBIT 2

Settling Defendants and Their Notice Addresses

WASTE INDUSTRIES, INC.

WASTE INDUSTRIES OF NEW HANOVER, INC.

c/o Marshal, Williams, & Gorham, L.L.P.

P. O. Drawer 2088

Wilmington, NC 28402

NEW HANOVER COUNTY

New Hanover County Administration Building

320 Chestnut Street, Room 309

Wilmington, NC 28401

STATE OF NORTH CAROLINA

Department of Environment, Health and Natural Resources

1601 Mail Service Center

Raleigh, NC 27699-1601

A. D. Royal

Carmen M. Butler

Charles A. Royal, Jr.

Eloise R. Piexotto

Mildred R. Simpson

Stephen D. Royal

Mildred Fleming Powell

c/o Hogue, Hill, Jones, Nash & Lynch

P. O. Drawer 2178

Wilmington, NC 28402

CITY OF WILMINGTON

P. O. Box 1810

Wilmington, NC 28402

TRASH REMOVAL SERVICES, INC.

c/o Waste Management of Carolinas, Inc.

2600 Delk Road

Marietta, GA 30067-8835

JERRY SAUNDERS t/a A & M SANITATION

c/o Stevens, McGhee, Morgan, Lennon & O'Quinn

P. O. Drawer 59

Wilmington, NC 28402

A-1 SANITATION SERVICES, INC.

c/o Stevens, McGhee, Morgan, Lennon & O'Quinn

P. O. Drawer 59

Wilmington, NC 28402

**EXHIBIT C to the Notice of Brownfields Property
Flemington Landfill Project**

Legal Description

Beginning at a new iron pipe in the westerly right-of-way line of the CSX Transportation Company Railroad (130 foot right-of-way), formerly known as SCL Railroad. Said beginning pipe being located South 25 degrees 26 minutes 35 seconds West 2,481.30 feet, from NC Grid Station "Queensboro" said station having coordinates of North 194537.11 feet and East 2313797.78 feet, NAD 83. Said beginning pipe also being located South 79 degrees 51 minutes 34 seconds West 65.00 feet, from a point on the center-line of said CSX Transportation Company Railroad. Said point on said center-line being located South 10 degrees 08 minutes 26 seconds East 858.98 feet, from the intersection of said center-line with the center-line of Flemington Street, formerly known as Fayetteville Avenue (60 foot right-of-way) as shown on a map of "Flemington" recorded in Map Book 4 at Page 64 of the New Hanover County Registry. Said beginning pipe also being located 1,266.97 feet, as measured in a northerly direction along said westerly right-of-way line from an old concrete monument at the intersection of said westerly right-of-way line with the northerly right-of-way line of Sampson Street (70 foot right-of-way) as shown on a Map of Survey of Oak Grove Cemetery recorded in Map Book 8 at Page 68 of said Registry. Running thence from said beginning pipe.

1. North 83 degrees 43 minutes 30 seconds West 1,220.03 feet, passing through a new iron pipe 406.68 feet, and 815.36 feet, to a new iron pipe; thence
2. North 21 degrees 01 minute 04 seconds West 2,124.93 feet, passing through a new iron pipe AT 531.23 feet, 1,062.46 feet, and 1,593.70 feet, to a new iron pipe. Last said pipe being a southerly corner of a 20.52 acre tract shown on a map recorded in Map Book 39 at Page 210 of said Registry; thence
3. North 06 degrees 16 minutes 54 seconds East 98.39 feet, along an easterly line of said 20.52 acre tract to a new iron pipe; thence
4. South 83 degrees 43 minutes 06 seconds East 1566.97 feet, along a southerly line of 20.52 acre tract, to an old iron pipe on the westerly right-of-way line of said CSX Transportation Company Railroad. Last said point being on a curve having a radius of 2,770.70 feet; thence
5. With arc of said curve and with the westerly right-of-way line of said CSX Transportation Company Railroad, as it curves to the west, to a new iron pipe at the southerly end of said curve that is South 15 degrees 02 minutes 24 seconds East a chord distance of 473.29 feet, from the preceding point; thence
6. South 10 degrees 08 minutes 26 seconds East 1,611.35 feet, along said westerly right-of-way line, to the point of beginning.

The above described tract contains 65.47± acres. The same being a portion of the Fleming and Royal Tract. Being also the same property described in that "Map of a Survey for Cape Fear Soccer Association, Inc." dated November 22, 2000, by Sherwin D. Cribb, PLS.



REBECCA T. CHRISTIAN
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 07/28/2004 03:01:45 PM
Book: RE 4427 Page: 191-229
Document No.: 2004040197
NOTICE 39 PGS \$125.00

Recorder: ANDREA FULFORD

State of North Carolina, County of New Hanover

The foregoing certificate of STEPHANIE S GRAHAM Notary is certified to be correct. This 28TH of July 2004

REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: 
Deputy Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2004040197

2004040197



REBECCA T. CHRISTIAN
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 07/28/2004 03:01:45 PM

Book: PLAT 46 Page: 216-217

Document No.: 2004040196

PLAT 2 PGS \$21.00

Recorder: ANDREA FULFORD

State of North Carolina, County of New Hanover

REBECCA T. CHRISTIAN, REGISTER OF DEEDS

By: Andrea Fulford
Deputy/Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2004040196

2004040196

MAP INDEX

Flemington Landfill Brownfields Project

Name of Map

Cape Fear Soccerplex, LLC

Owner's Name

Type of Map: ☒ Subdivision



FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2004 JUL 28 03:01:45 PM
BK: 46 PG: 216-217 FEE: \$21.00

Condo

Highway

Book 446 Page(s) 216

Number of Pages 1

Recorded By: Donna Horne
Deputy/~~Assistant~~/Register of Deeds

INSTRUMENT # 2004040196